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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M No.58696 of 2023 (O&M)
Date of decision: 20.09.2024

Jarnail Singh
.....Petitioner
Versus
State of Punjab
.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Ms. Riffi Birla, Advocate
with Mr. Kuldeep Singh, Advocate
for the petitioner.

Mr. Surya Kumar, AAG, Punjab.

NAMIT KUMAR J. (Oral)

1. Prayer in this 3rd petition filed under Section 439 Cr.P.C., is for grant of regular bail to the petitioner in FIR No.134 dated 20.12.2021, registered under Sections 21(b) of the NDPS Act, 1985 (Section 21(c) of the NDPS Act and Section 25 of the Arms Act, 1959 added later on) at Police Station Kalanaur, District Gurdaspur.
2. As per the prosecution's case, on 20.12.2021, the police party during patrolling duty and checking of vehicles were present at T-Point Rudiana and thereafter, one motorcycle was seen coming from the side of Dera Baba Nanak. The motorcycle was given signal to stop with torch light but on seeing the policy party, the motorcyclists became perplexed and tried to return back, however, they were apprehended by the police party. The rider of the motorcycle disclosed his name as Raj

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Singh and pillion rider disclosed his name as Jarnail Singh. On the basis of suspicion, the police party conducted search upon Raj Singh and from the pocket of his trouser one envelope containing 20 gms. of Heroin was recovered and one Samsung Phone was also recovered. On search of Jarnail Singh (petitioner herein), one Samsung Mobile was recovered from the pocket of his shirt, which was taken into police possession. Both the accused were arrested and the impugned FIR was registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is innocent and has been falsely implicated in the present case. She further submits that the petitioner is in custody for the last 02 years, 08 months and 25 days and he is not involved in any other case; custodial interrogation of the petitioner is not required and no compliance under Section 50 of the NDPS Act has been made by the police. No recovery has been effected from the petitioner. No independent witness has joined in the investigation. Petitioner has no criminal antecedents.

4. Learned counsel for the petitioner further submits that the investigation in the present case is complete as challan stands presented on 15.06.2022; charges have been framed on 17.05.2023 and out of total 14 prosecution witnesses, only 03 PWs have been examined so far and the next date of hearing before the trial Court is 26.09.2024 and the trial is likely to take considerable time to conclude and, therefore, no

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fruitful purpose would be served by detaining the petitioner behind the bars.

5. Per contra, learned State counsel has opposed the prayer for grant of regular bail to the petitioner on the ground that during the investigation, the petitioner and his co-accused confessed that they have links with the smugglers of Pakistan and through them they used to procure the consignment from Pakistan to India. Now the consignment of narcotic substance got imported from Pakistan is lying kept in the area of Jalalabad (India) near Burji No.230/4 and they only knows about it and on identification they may got recover the same. He further submits that on 24.12.2021, SI Balbir Singh with the police party reached at Jalalabad alongwith the accused persons, who got recovered two pistols ZIGANA alongwith 4 Magazines, one parcel of Heroin containing 1005 gms. net weight 965 gms., sealed with the seal bearing impression “BSF” were produced before SI Balbir Singh which was taken into police possession by sealing the same by SI Balbir Singh with his seal bearing impression “BS” and thereafter, as per GD No.16 dated 24.12.2021, offences under Section 21(c) of the NDPS Act and Section 25 of the Arms Act, have been added. He further contends that as per the chemical examination report, the ingredients of Diacetylmorphine (Heroin) have been found present in the recovered contraband. Lastly, he submits that the petitioner has committed serious offence and in case, the petitioner is granted the concession of bail, he may abscond from the process of law.

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6. I have heard learned counsel for the parties and perused the record.

7. The petitioner's arguments did not point toward any material contradictions. Recovery was effected from the demarcated place as indicated by the petitioner along with co-accused Raj Singh. Non-examination of the independent witness is not an illegality, and its outcome depends upon the nature of evidence tendered in the examination-in-chief and its cross-examination. The quantity allegedly involved in this case is commercial. Given this, the rigours of Section 37 of the NDPS Act apply in the present case. The petitioner must satisfy the twin conditions put in place by the legislature under Section 37 of the NDPS Act.

8. The petitioner has not stated anything in the bail petition to discharge the burden put by the stringent conditions placed in the statute by the legislature under Section 37 of the NDPS Act. The investigation reveals sufficient prima facie evidence to connect the petitioner with the crime, thus, the petitioner fails to make out a case for regular bail. A perusal of the bail petition and the documents attached point towards the petitioner's involvement and does not make out a case for bail.

9. Without commenting anything on merits of the case and considering the fact that the recovery of Heroin, involved in the present case, falls within the ambit of commercial quantity and, therefore, as per Section 37 of the NDPS Act, the petitioner is not entitled to be

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released on bail in case involving commercial quantity of NDPS. Accordingly, no ground in exercising discretionary relief under Section 439 Cr.P.C., for grant of regular bail to the petitioner is made out.

10. Dismissed.
11. Any observations made hereinabove shall not to be construed as an expression of opinion on the merits of the case.

(NAMIT KUMAR)
JUDGE

20.09.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No